IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3296 OF 1990

Capt.Shivram Gundopant Shirodkar,)
Indian Inhabitant, residing at)
B-4/8, Manav Kalyan Society,)
Bangur Nagar, Goregaon(West),)
Bombay.) ..PETITIONER.

Versus

1. Union of India, through the)
Secretary to Government of)
India, Ministry of Defence,)
South Block, Parliament)
Street, New Delhi.)

2. Adjutant General, Personal)
Services, Directorate PS-4(C),)
Adjutant General's Branch,)
Army Headquarters, DHQ,)
P.O. New Delhi - 110 011.)

3. Director General Resettlement,)
Ministry of Defence, West)
Block IV, R.K.Puram,)
New Delhi - 110 066.)..RESPONDENTS.

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Mr.N.M.Ganguly, Advocate for the Petitioner.
Mr.R.S.Shetty a/w. Mr.M.V. Masurkar, Advocates for the Respondents.

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CORAM : **F.I.REBELLO AND**
SMT.V.K.TAHILRAMANI,JJ.

DATE OF RESERVING
THE ORDER : JULY 26, 2006.

DATE OF PRONOUNCING
THE ORDER : AUGUST 11, 2006.

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.)

1. Through this Petition filed under Article 226 of the Constitution of India, the Petitioner is praying for a writ of mandamus or orders/directions in the like nature against the Respondents to grant him the status of Ex-serviceman and to treat him accordingly for grant of all pensionary benefits and for payment of service pension by framing the Rules in that behalf if necessary.

2. The brief facts relevant to consider the petitioner’s case are as under :

. The petitioner on completing his B.A.(Spl.) and B.Com Degree came to be selected for grant of Commission in the Regular Reserve of Officers (Class A & B) by communication dated 18.7.1963 in the rank of Second Lieutenant and attached to the Maratha Regiment of the HQ, Southern Command for administration and training. He was called for active service and put in active service from 1.1.1972 to 12.12.1972 during the period of

Emergency declared due to Indo-Pak War, which was declared in the year, 1972. Prior to the same the petitioner was promoted to the rank of captain from 7.9.1971 and he continued to hold the said rank till retirement after completing prescribed period of reserve liability i.e. on or about 10.3.1985 on attaining the age of superannuation i.e. 50 years. He was paid the sum of Rs.400/- as a kit and outfit allowance and Retaining Fee. He spent a total period of four months under training i.e. three months in the year 1963 and one month in the year 1967; and active service from 1.1.1972 till 12.12.1972 during the Indo-Pak War. There is no dispute that for his training period as well as active service he was paid full admissible salary and other allowances payable to the regular officers in the Army holding the rank of Second Lieutenant or Captain as the case may be. On his retirement, the petitioner expected that he would be treated as an ex-serviceman within the meaning of Section 2(c) of the Ex-servicemen (Reemployment in Central Civil Services and Posts) Rules, 1979, but, he was refused to so treated and therefore he has

approached this Court.

3. The Respondents have filed affidavit in reply opposing the petition. They have pointed out that Commission in the Regular Reserve Officer (Class A) in the infantry is not a commission for active service in the infantry. The ex-servicemen are the retired members of the Armed Forces who were in active service and not the members of the Regular Reserve Officials. The instruction of A.I.(Army Instruction) No.10/S/63 have set out the terms and conditions for "Regular Reserve Officer" (RRO) and those consist of four classes i.e.‘A’, ‘B’, ‘X’ & ‘S’. The petitioner is from Class ‘A’ category which comprises officers who carry out training for varying periods in peace time. Though, these officers are granted promotions to the rank of Captain and Major, they do not put in a regular or active service in any capacity/form as members of the Armed Forces unless called upon during emergencies. In the normal course, they are engaged for training purposes. As noted earlier they are eligible to receive the salary and allowances payable to the regular rank officer

only when they are called for emergency services. Thus, they are not the regular members of the Armed Forces and they do not receive the monthly salary and allowances as such. They are paid retention allowance as well as kit and outfit allowance. Their retention as RRO is only upto 50 years and not more. These instructions clearly support the case of the Respondents that RRO are not in any way part of the Armed Forces as its regular/active members and, therefore, they cannot be called as ex-servicemen on discontinuation of their retention on the age of 50 years. Under the Army Instructions dated 28.2.1968, the Government of India granted some benefits to RROs in terms of terminal gratuity, disability pension and certain other reliefs. However, at no point of time service pension was granted to them. The petitioner is not entitled to any such benefit. The petitioner was entitled for the terminal gratuity at the rate of Rs.1000/- for each completed year of service and the same has admittedly been taken by him. The petitioner has relied upon the letter dated 30.8.1987 from the Ministry of Defence addressed to the Chiefs of

Army, Navy and Air Force, however the same does not apply to RROs and the same was regarding the Government decision of the fourth pay commission's recommendations regarding pensionary benefits. The petitioner cannot rely upon the said communication and seek a writ to apply the same to him. In the regular active service there are officers who are brought on reserve list of officers on account of disability they suffer on health ground or while on duty. They are not at any point of time comparable with RROs though on their retirement they are eligible to be retained as Class B RRO. After his retirement in 1985, the petitioner came across the office memorandums dated 30.10.1987 as well as 14.4.1987 and appears to have submitted a representation claiming the status of ex-serviceman. His case is based on clause VII of the Army Instruction No.10/S/63. The said clause speaks of "liability for recall" and it states that a RRO, unless his recall is otherwise provided for, remain liable to be recalled to service in the Regular Army, until he reaches the age of 45 years in Class 'A'. This provision is for recall of RRO and it cannot be

read to imply that commission RRO is a commission for regular/active service of the Armed Forces. Thus, the claim of the petitioner is not supported by any Rules/Instructions applicable to RRO and, therefore, he cannot seek a writ from this Court against the Respondents to treat him as an ex-serviceman and grant him the benefits accordingly.

4. Hence, the Petition fails and the same is summarily rejected.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]